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The Alarming Philosophy Involved in CIA Suit

In a bizarre legal action in Baltimore, one Estonian emigre is suing another for slandering him by calling him a Soviet secret agent. The defense, to which the CIA certifies, is that the defendant emigre was a CIA agent acting under CIA orders and therefore totally immune from legal responsibility for what he said publicly about his fellow emigre.

The government is taking this matter very seriously both from the point of view of shielding the black arts of the CIA and in establishing the privilege of government officials in the performance of their duties.

It does not seem to matter, in this legal action, whether or not the CIA's emigre lied or told the truth in labelling his fellow Estonian as a Soviet agent. The government contends that he was ordered to do so by his employer, the CIA, and therefore he cannot be called into court to answer for his acts.

So serious is this whole matter that a number of CIA people have come in from the cold to appear publicly in court in Baltimore. Five government lawyers are handling the CIA agent in his court appearances, pulling him off the stand at intervals to instruct him in his answers to questions so that he will not unwittingly reveal how the CIA spy apparatus works.

Only the great fictional Secret Agent 007, James Bond, would know what is

really going on, who is a double or triple agent and why the CIA ordered its agent to denounce his fellow emigre. The CIA may be beyond comprehension, but the legal principle on which it relies is not.

This is a highly pernicious principle as it is being applied and is appalling in its ultimate implications. Any truth or lie uttered by a public official against any citizen, under this principle, is privileged if the truth or lie was uttered in the line of duty. A government official, by this standard, has the same immunity as a member of Congress in what he says during official sessions of Congress. Presumably anyone who publishes what the official says would have the same immunity. A bureaucrat can therefore call an honest citizen a thief and get away with it. The citizen has no recourse if the bureaucrat was acting on official instructions, or even within the "outer perimeters" of the scope of his public employment.

This seems so patently absurd that it shocks the sensibilities to hear it put forward in this context as sound legal principle, a principle, by the way, which has a federal judge in Baltimore completely stumped.

The Estonian who made the charge would be hard put to prove it without, and perhaps with, the support of the CIA. Exactly how it is to be proved

in court, even by the CIA, that a person who denies the charge so vehemently is or was in the employ of the Russian KGB is a little hard to visualize. What obviously bothers the CIA is not that one of its agents might have to pay a heavy judgment for slander. There are plenty of secret funds for that contingency. But if it could prove the Estonian was a KGB agent it would have to reveal how it found out. The possibility always remains that it could not prove the accusation even after revealing how it found out.

If the accused Estonian is in fact an agent of KGB, as averred by CIA, he is very cunning and audacious. He gave the FBI a perfect opportunity to arrest him by appearing in court in Baltimore last week.

The principle of immunity for official acts and statements may be justified in many cases. A 5-4 Supreme Court decision in the Barr V. Mateo case, also a slander action, established the immunity of public statements made by government officials and employees. Government officials acting in good faith are entitled to qualified protection if they speak without malice. But if they speak with malice and are proved wrong then it is the victim of their words who is without protection and must suffer unjustly. That seems to be the case at present.

When secrecy and immunity are combined, as in the Estonian emigre case, a

malicious instrument has been created for the destruction of a man's entire career by careless or venomous public officials, and he has no remedy. Every Internal Revenue agent, customs inspector, FBI agent, narcotics agent, even a Capitol policeman, is immune in what he says of a citizen if by the most liberal construction such statements lie within the outer perimeters of his duty. There must be some sharper defined point where the scope of his duties ends.

We have moved into new conditions since Barr V. Mateo and since the late Judge Learned Hand came down in favor of giving the benefit of the doubt and good faith to public officials lest harassing legal actions dampen their ardor in the discharge of their duties. The relations between the individual and the government have multiplied. The hand of the law and the eye of the tyrant are a little heavier and a little sharper.

Judge Roszel C. Thomsen, who is sitting in this case, is not to be envied. He has rightly shown respect for the CIA's imperative for secrecy. How CIA can maintain its secrecy without immunity is the problem. But entirely aside from the two Estonians a broader and longer range American imperative is also involved, that of protecting the citizen from malicious acts by government. Perhaps this case will give a differently composed Supreme Court the chance to review the 5-4 Barr V. Mateo decision.